

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

IN THE MATTER OF THE TRUSTEE'S )	
SALE OF THE REAL PROPERTY OF )	No. 57600-3-I
DOROTHY ERVIN, AS HER )	
SEPARATE ESTATE. )	
)	DIVISION ONE
DOROTHY R. ERVIN, )	
)	
Appellant, )	
)	
v. )	
)	
MORTGAGE ELECTRONIC )	
REGISTRATION SYSTEMS, INC., as )	
nominee for HOUSEHOLD FINANCIAL )	UNPUBLISHED OPINION
CORPORATION, )	
)	
Respondent. )	FILED: August 21, 2006

**DWYER, J.** — Dorothy R. Ervin appeals from a superior court order directing the disbursement of surplus proceeds from a trustee sale of her homestead property to Mortgage Electronic Registration Systems, Inc., nominee for Household Financial Corporation, the holder of a second deed of trust on the property. Ervin contends that her homestead interest in the surplus proceeds from the nonjudicial foreclosure sale (pursuant to a first deed of trust) should take priority over Household's second deed of trust interest. Ervin's position is inconsistent with this court's decision in In re Trustee's Sale of the Real Property of Upton, 102 Wn. App. 220, 6 P.3d 1231 (2000). Accordingly, we affirm.

### **FACTS**

Ervin owned real property in King County that constituted her homestead residence. In 2000, Ervin mortgaged her home through Liberty Financial Corp., which simultaneously placed two loans against the property. The first position loan was assigned to the Chase Manhattan Mortgage Corporation, which held a note and deed of trust securing a loan in the amount of \$140,000. Household held a note and deed of trust securing a loan in the amount of \$35,000. Household's deed of trust interest was subordinate to that of Chase.

When Ervin defaulted on her monthly payment obligations, Chase instituted a nonjudicial foreclosure proceeding. On September 30, 2004, prior to the trustee sale, Ervin filed for Chapter 7 bankruptcy protection. In her petition for bankruptcy, Ervin listed Household as a secured creditor and claimed for herself a homestead exemption pursuant to RCW 6.13.030.<sup>1</sup> As a result of the bankruptcy filing, the trustee sale was automatically stayed.

Chase successfully petitioned the bankruptcy court to lift the stay. On November 19, 2004, the trustee sold the property for \$190,500. After satisfying the sum owed to Chase, the trustee deposited the remaining \$43,082.26 with the King County Superior Court.

On January 5, 2005, the bankruptcy court issued a discharge order. This

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<sup>1</sup> Ervin elected to claim the homestead exemption under state rather than federal law. The statute provides: "[T]he homestead exemption amount shall not exceed the lesser of (1) the total net value of the lands, mobile home, improvements, and other personal property ..., or (2) the sum of forty thousand dollars in the case of lands, mobile home, and improvements ...."

order did not address the distribution of the surplus foreclosure sale proceeds.

On January 11, 2005, the bankruptcy case was closed.

In superior court, Household moved for disbursement of the surplus proceeds to satisfy the debt owed to it by Ervin. Household argued that it was entitled to the surplus as the next lienholder of record pursuant to RCW 61.24.080. Ervin opposed Household's motion. She responded by filing a \$40,000 claim against the surplus proceeds, claiming this amount as a homestead exemption. The superior court disbursed \$39,700.44 of the surplus to Household, leaving the remaining balance for Ervin. The court's award to Household included interest accrued through February 23, 2005, the date of its order.

## **DISCUSSION**

### **I. Priority of Deed of Trust Beneficiary**

Ervin contends that the trial court erred in awarding Household \$39,700.44 from the surplus proceeds of the trustee's sale. Relying on the homestead exemption statute, Ervin claims that her homestead interest took priority over the deed of trust interest of Household and that, as a result, she was entitled to \$40,000 from the proceeds. We disagree.

"Generally, a property owner's homestead interest in property takes priority over the interests of other creditors." Upton, 102 Wn. App. at 223. Pursuant to the homestead exemption statute, RCW 6.13.070, "the homestead is

exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in RCW 6.13.030.” RCW 6.13.070(1).

However, an exception to this general rule is that an owner’s homestead interest in property is subordinate to the interest of a deed of trust beneficiary. RCW 6.13.080;<sup>2</sup> Upton, 102 Wn. App. at 221.

The trial court correctly relied upon the Upton decision in making its ruling. In that case, we noted:

The issue in this case is whether a property owner's homestead interest in the excess proceeds from a nonjudicial foreclosure sale pursuant to a first deed of trust, takes priority over the interest of a second deed of trust beneficiary in the proceeds. A deed of trust beneficiary's interest in real property is superior to an owner's homestead interest. Interests in real property continue in the proceeds from a trustee's nonjudicial foreclosure sale pursuant to a deed of trust, in the same order of priority that they attached to the property. Therefore, we hold that the second deed of trust beneficiary has a superior interest in the excess proceeds.

Upton, 102 Wn. App. at 221.<sup>3</sup>

As we explained, important policy concerns support this determination:

A contrary holding would discourage lenders from granting second deeds of trust and from entering subordination agreements. Both of these services are important to consumers. Moreover, our holding will not in effect extinguish the homestead right by operation of the

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<sup>2</sup> RCW 6.13.080 provides: “The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained ... (2) On debts secured (a) by security agreements describing as collateral the property that is claimed as a homestead or (b) by mortgages or deeds of trust on the premises that have been executed and acknowledged by ... any unmarried claimant.”

<sup>3</sup> Ervin contends that Upton should be overruled because it conflicts with In re Trustee's Sale of Real Property of Sweet, 88 Wn. App. 199, 944 P.2d 414 (1997), on the issue of priority of rights to surplus proceeds. This contention is without merit. In Sweet, the competing claimant was not a deed of trust beneficiary, but a judgment creditor whose lien was subordinate to the homestead interest. In the instant case, the proceeds of the nonjudicial foreclosure trustee sale are specifically excepted from the homestead exception by RCW 6.13.080(2). Therefore, the holding in Sweet does not conflict with the holding in Upton.

deed of trust statute. Liens other than junior deeds of trust continue to be subordinate to the homestead interest.

Upton, 102 Wn. App. at 225.

The trial court did not err.

## II. Bankruptcy Court Ruling Not Required

Ervin next contends that the bankruptcy court's order of discharge eliminated her debt to Household, and that Household's second deed of trust lien was, therefore, extinguished by the foreclosure sale pursuant to the first deed of trust. Ervin asserts that Household abandoned its interest in the surplus proceeds because Household neither petitioned the bankruptcy court to request disbursement of the proceeds nor asserted its lien against the proceeds in the bankruptcy court.<sup>4</sup>

However, Washington law governs the disposition of proceeds following a nonjudicial foreclosure sale. The applicable statute, RCW 61.24.080, provides a secured creditor with a lien on the surplus proceeds without requiring the creditor to establish or assert its lien against the proceeds in court.<sup>5</sup>

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<sup>4</sup> Ervin relies on 11 U.S.C. § 552(a), which provides: "Except as provided in subsection (b) of this section, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case." Subsection (b)(1) provides: "[I]f the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, products, offspring, or profits of such property, then such security interest extends to such proceeds, products, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law ...."

<sup>5</sup> RCW 61.24.080(3) provides: "Interests in, or liens or claims of liens against the property eliminated by sale under this section shall attach to the surplus in the order of priority that it had attached to the property."

Household's lien, pursuant to the second deed of trust, attached to the surplus proceeds by operation of law. Regardless of whether Ervin's personal liability was discharged by the bankruptcy court's order, Household's lien on Ervin's real property was not eliminated. Household was not required to assert its lien against the surplus proceeds in the bankruptcy court. The trial court properly so ruled.

### III. Post-Petition Interest

Finally, Ervin contends that the trial court erred by allowing Household to recover interest owed on the debt. Ervin's claim is that the accrual of interest on a debt must cease as of the time a bankruptcy petition is filed. See Beecher v. Leavenworth State Bank, 192 F.2d 10 (9<sup>th</sup> Cir. 1951). While the principle of law relied upon by Ervin is generally applicable, it is not applicable in these particular circumstances.

The United States Court of Appeals for the Ninth Circuit instructs us that: "Creditors are allowed post-petition interest if the value of the collateral exceeds the debt plus the accrued interest." In re Anderson, 833 F.2d 834, 836 (9<sup>th</sup> Cir. 1987). This holding is based on 11 U.S.C. § 506, which provides, in pertinent part:

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

(c) The trustee may recover from property securing an

allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.

Ervin contends that her debt to Household was not “an allowed secured claim,” thus rendering the above-quoted statute inapplicable. We disagree.

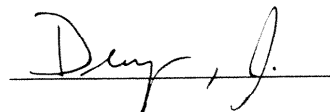
Under § 506 a claim is allowed as secured up to the value of the collateral or the amount of the debt, whichever is smaller. In other words, if the debt is undersecured, then the creditor has an allowed secured claim only up to the value of the collateral. 11 U.S.C. § 506(a).

If the value of the collateral is more than or equal to the debt, the claim *is an allowed secured claim* for the full amount of the debt. To the extent the value of the collateral is more than the debt, the creditor is also entitled to collect interest earned on the claim after filing of the bankruptcy petition and reasonable fees, costs, and charges provided under the contract between the creditor and the debtor. 11 U.S.C. § 506(b).

In re Rogers, 57 B.R. 170, 172 (Bankr. E.D. Tenn. 1986) (emphasis added).

As defined by the court in Rogers, Ervin’s obligation to Household constituted “an allowed secured claim.” Thus, the trial court correctly allowed Household to recover interest owed on the debt. 11 U.S.C. § 506(b); In re Anderson, 833 F.2d at 836.

Affirmed.



WE CONCUR:

